IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4283 OF 2005

Prakash Futarmal Jain ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. T.K. Sayed for the Applicant.
Ms M. H. Mhatre, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATED : JULY 20, 2005.

P.C.:

1. Heard Advocate appearing for the Applicant and the learned A.P.P. for the State. F.I.R. has been registered on 3rd December, 2005 against the Applicant and co-accused for the offences punishable under sections 420, 465, 467, 468, 471 read with section 34 of the Indian Penal Code. The Applicant was arrested on 17th December, 2003. The complainant is one Dayal Dipchand Jagashiya who is working as a salesman in a shop. His allegation is that on 7th October, 2002 two persons visited the shop. One person gave his name as Manish. He handed over a Demand Draft in sum of Rs.31,200/- and purchased two air-condintioning machines. The Demand Draft was found to be fabricated. After the Applicant was arrested, the complainant identified the person who was posing himself to be one Manish. The said person is Rahul who is a co-accused. The complainant identified the Applicant as person who accompanied the other co-accused Rahul. The allegation in the F.I.R. is that it was the co-accused Rahul who purchased the two air-conditioning machines and he handed over demand

draft in the sum of Rs.31,200/-.

2. The Advocate for the Applicant submitted that the Applicant is in custody from 17th December, 2003. He submitted that investigation is complete and therefore, it is not necessary to detain the Applicant. He pointed out that there is no recovery made at the instance of the Applicant and the recovery is at the instance of the co-accused. He has placed reliance on affidavit of father of the Applicant in which father of the applicant has disclosed his address of place of residence and has stated that the Applicant is residing with him.

3. The learned A.P.P. submitted that there are five similar offences registered against the Applicant which are of similar nature. The details of the said offences registered against the Applicant are placed on record by learned A.P.P. Therefore, the learned A.P.P. submitted that the Applicant cannot be enlarged on bail.

4. The learned Sessions Judge has rejected the Application filed by the Applicant on the ground that the Applicant is not having permanent address and the address given by him is temporary address and the second reason given is that the Applicant is habitual offender and therefore, there is every possibility

that he will indulge in similar activities after he is enlarged on bail.

5. I have considered the rival submissions. Perusal of the F.I.R. shows role of the Applicant. He accompanied the co-accused Rahul to the shop. Case made out in the F.I.R. is that it is the co-accused who purchased the two air-conditioners and co-accused handed over demand draft of sum of Rs.31,200/-. The first informant has identified the Applicant as person who accompanied the co-accused Rahul. There is no recovery at the instance of the Applicant. The Applicant is already in the custody for the last more than one and half years. The Applicant claims to be resident of Bhiwandi, District Thane. Out of the five other offences which are registered against the Applicant, four have been registered at Mumbai. As the role alleged against the Applicant in the present offence is very limited and as the Applicant is already in custody for last more than one and half years, the Applicant is entitled to be enlarged on bail. The Applicant is already enlarged on bail in other cases registered against him. However, stringent conditions will have to be imposed on the Applicant as the offences against the Aplicant have been registered in Mumbai in which majority of the witnesses are from Mumbai. The Applicant will not be permitted to enter the city of Mumbai except for

attending the dates fixed in the cases. To ensure that the Applicant does not abscond, he will have to furnish local sureties and he will have to report to the local police station till the disposal of the trial.

6. Hence, I pass the following order:

: O R D E R :

i) The Applicant shall be enlarged on bail in connection with C.R.No.287 of 2003 of Nehru Nagar Police Station , subject to furnishing a personal bond of Rs.25,000/- with two local sureties from the city of Bhiwandi, District Thane in the like amount.

ii) The order granting bail will be given effect to only after the Applicant makes available his address of place of residence in Bhiwandi and his telephone number at the place of residence, if any, to the Investigating Officer. The effect will be given to this order only after the Applicant surrenders his passport to the Investigating Officer. If the Applicant does not possess any passport, he will file affidavit to that effect in this Court within a period of two weeks from today.

iii) The Bail is granted subject to condition that

till disposal of the trial, Applicant will not enter the city of Mumbai without permission of the concerned court save and except for attending to the dates fixed in various cases.

iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

v) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) The parties to act upon an authenticated copy of this order.

JUDGE